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REPUGNANT CLAUSES IN DEEDS.

MODIFICATION OF RULE THAT FIRST CLAUSE CONTROLS LAST.

It was an ancient maxim that the first deed and the last will prevails.[1] This principle was applied to inconsistent clauses in the same instrument, so that the former of such clauses prevailed in case of a deed, the latter in case of a will.[2] And so it became the technical rule that when two clauses in a deed are so repugnant that they cannot be reconciled the first is to be given effect and the latter rejected.[3] But as stated in 18 Corpus Juris, p. 268 this rule does not prevail where there is room for construction, where reconcilement is possible, or where the inconsistency between clauses is so great as to avoid the deed for uncertainty.

1. Sheppard's Touchstone, 88.

2. Leicester *v.* Biggs (Eng.), 2 Taunt. 113; Thompson *v.* Hill, 137 Ga. 308, 73 S. E. 640.

3. Robertson *v.* Robertson, 191 Ala. 297, 68 So. 52; Doe *v.* Porter, 3 Ark. 18, 36 Ann. Dec. 448; Marden *v.* Leimbach, 115 Md. 206, 80 Atl. 958; Saunders *v.* Hanes, 44 N. Y. 353; Fortune *v.* Hunt, 152 N. C. 715, 68 S. E. 213; Blair *v.* Muse, 83 Va. 240, 2 S. E. 31; Walverton *v.* Hoffman, 104 Va. 605, 52 S. E. 176; Morris *v.* Bernard, 114 Va. 630, 77 S. E. 458; Paxton *v.* Benedum-Trees Oil Co., 80 W. Va. 187, 94 S. E. 472.

When a provision is made in a deed in unambiguous words, it cannot be revoked by implication by a later clause. Morris *v.* Bernard, 114 Va. 630, 77 S. E. 458.

Where a deed granted, bargained, and sold to the grantee, her heirs and assigns, certain described premises, a subsequent clause, by which the grantor requested that the property should be that of W. and descend to his children in case he survived the grantor and grantee, who were husband and wife, was repugnant to the fee conveyed to the grantee by the granting clause of the deed, and was therefore void. Wolverton *v.* Hoffman, 104 Va. 605, 52 S. E. 176.

In Georgia it is provided by Civil Code 1910, sec. 4187 that if two clauses in a deed be utterly inconsistent, the former must prevail; but the intention of the parties, from the whole instrument, should, if possible, be ascertained and carried into effect. Thomson *v.* Hill, 137 Ga. 308, 73 S. E. 640; Walker *v.* Walker, 139 Ga. 547, 77 S. E. 795; Starney *v.* McGinnis, 145 Ga. 226, 88 S. E. 935.

Nor does it apply to a repugnance between parts of the same clause.[4]

The trend of modern authorities is toward restricting the operation of this rule, so as to give effect to every part of a deed if possible; and if this can not be done, and there is an obvious intent derivable from the face of the instrument, the tendency is to reject only superadded parts which are repugnant thereto, if it can be done without violating some rule of law.[5] The intention of the parties and not the relative positions of the repugnant clauses is the important question in construing a deed and modern courts so far modify the old technical rule that they will give effect to the clause which harmonizes with the purpose of the grant and the intention of the parties irrespective of whether it be first or last.[6]

In 18 Corpus Juris p. 287 it is said:

"If recitals in a deed are inconsistent or repugnant, the first recital does not necessarily prevail over the latter, but the whole language of the deed is to be construed together in order that the true construction may be ascertained." [7]

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4. Zittle *v.* Weller, 63 Md. 190.

5. Thompson *v.* Hill, 137 Ga. 308, 310, 73 S. E. 640.

"The strictness of the ancient rule as to repugnancy in deeds is much relaxed, so that in this, as in other cases of construction, if clauses or parts are conflicting or repugnant, the intention is gathered from the whole instrument." Collinsville Granite Co. *v.* Phillips, 123 Ga. 830, 51 S. E. 666.

6. Rathburn *v.* Geer, 64 Conn. 421, 30 Atl. 60; Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666; Palmer Oil Co. *v.* Blodgett, 60 Kan. 712, 57 Pac. 947; Dinger *v.* Lucken, 143 Ky. 850, 137 S. W. 776. Utter *v.* Sidman, 170 Mo. 284, 70 S. W. 702; Miller *v.* Dunn, 184 Mo. 318, 83 S. W. 436; State Sav. Bank *v.* Stewart, 93 Va. 447, 25 S. E. 543; Weekley *v.* Weekley, 75 W. Va. 280, 83 S E. 1005.

Substance, rather than technical nicety in the location of clauses, is controlling. Cobb *v.* Wrightsville, etc., R. Co., 129 Ga. 377, 58 S. E. 862.

All rules of construction have but one object, and that is to ascertain the intent of the parties; and, if such intent contravenes no rule of law, full effect must be given it. Morris *v.* Bernard, 114 Va. 630, 77 S. E. 458.

7. "In such a case the court will look into the surrounding facts, and will adopt that construction which is the most definite and certain, and which will carry out the evident intention of the parties." 13 Cyc. 627. Collinsville Granite Co. *v.* Phillips, 123 Ga. 830, 842, 51 S. E. 666. See Rogers *v.* Highnote, 126 Ga. 740, 56 S. E. 93.

In a Kentucky case[8] it was held that a deed containing an express grant to the grantee, 'her heirs and assigns forever,' followed by a stipulation that she was to hold only a life estate in the land, which thereafter was to pass to the grantor's children, vested in the grantee only a life estate. The court said.

> "The rule is that where by a deed a fee is granted, and the deed as a whole shows an intention to vest the grantee with a fee, an attempted limitation upon the fee will be disregarded. But in all cases the effect of the deed turns upon its proper construction when read as a whole; and if upon the whole instrument it appears that the grantor's intention was to vest a less estate than a fee in the grantee, that intention will be carried into effect. * * * The two clauses of the deed are to be read together in ascertaining the grantor's intention; and upon the whole instrument, the estate granted was only intended to be a life estate. To give the instrument a greater application would be to defeat the plainly expressed intention of the grantor. This cannot be done."

Repugnant words yield to the purpose of the grant, where such purpose is clearly ascertained from the premises of the deed, although such words stand first in the grant.[9]

Where a deed is inartificially drawn and contains no formal parts or clauses, technical rules of construction applicable to repugnant stipulations should not be applied.[10]

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8. Dinger *v.* Lucken, 143 Ky. 850, 137 S. W. 776, cited and approved in Weekley *v.* Weekley, 75 W. Va. 280, 83 S. E. 1005.

9. Goldsmith *v.* Goldsmith, 46 W. Va. 426, 33 S. E. 266; Uhl *v.* Ohio River R. Co., 51 W. Va. 106, 41 S. E. 340; Flagg *v.* Eames, 40 Vt. 16, 94 Am. Dec. 363.

10. Johnson *v.* McCoy, 112 Va. 580, 72 S. E. 123.

"The habendum may lessen, enlarge, explain or qualify, but not totally contradict or be repugnant to, the estate granted in the premises". Durand *v.* Higgins, 61 Kan. 110, 72 Pac. 567.

"The habendum, like any other part of the deed, may be examined in construing the instrument so as to effectuate the intention of the parties; yet it is not an absolutely essential part of the deed, and in modern conveyancing is being abandoned and quite generally becoming obsolete. If the grant or premises in the deed contain words of limitation, nothing remains for the habendum to accomplish, and it may be dispensed with. So unimportant is the habendum that, if repugnant to the limitation appearing in the premises, it will be ineffectual to control the premises; and it may be rejected entirely when repugnant to or inconsistent with other clauses of the deed." Hunter *v.* Patterson, 142 Mo. 310, 44 S. W. 250.

GRANTING CAUSE AND HABENDUM.

Common Law Rule.—It was a rule at common law that, if the habendum or any later clause in a deed was repugnant and irreconcilable to the granting clause, the granting clause would control; and this rule has been stated generally in numerous cases.[11]

Thus if the grantor, in the granting clause of a deed, expresses an intention to convey his whole interest in the land, but in a subsequent clause expresses an intention to convey only an undivided half of his interest therein, the two clauses are, of course, inconsistent, and the granting clause, passing the whole interest in the land, must prevail.[12] This rule might well be thought to have been a rule of construction merely, and one to be invoked only to aid in determining the intention of the parties. But it was exalted into a rule of positive law. As illustrations of this rule, if a grant was to one and his heirs, and the habendum was to the heirs of his body, the habendum was given force because it did but explain what heirs were intended in the granting clause; but if a grant was to one and his heirs and the habendum or a later clause was to the grantee for his life, or the life of another the habendum or later clause was considered void as being repugnant to the meaning conveyed by the words "his heirs" as previously used. The reason commonly given for this hard and fast rule was that one could not be allowed by subsequent

11. Graves *v.* Wheeler, 180 Ala. 412, 61 So. 341; Mt. Olive Stave Co. *v.* Hanford, 112 Ark. 522, 166 S. W. 532; Eldridge *v.* See Yup Co., 17 Cal. 44; Palmer *v.* Cook, 159 Ill. 300, 42 N. E. 796, 50 Am. St. Rep. 165; Chamberlain *v.* Runkle, 28 Ind. App. 599, 63 N. E. 486; Prindle *v.* Iowa Soldiers Orphans Home, 153 Iowa 234, 133 N. W. 106; Durand *v.* Higgins, 61 Kan. 110, 72 Pac. 567; Virginia Iron, etc., Co. *v.* Dye, 146 Ky. 519, 142 S. W. 1057; Berry *v.* Billings, 44 Me. 416, 69 Am. Dec. 107; Callaway *v.* Forest Park Highlands Co., 113 Md. 1, 77 Atl. 141; Smith *v.* Smith, 71 Mich. 633, 40 N. W. 21; Robinson *v.* Payne, 58 Miss. 690; Hunter *v.* Patterson, 142 Mo. 310, 44 S. W. 250; Brown *v.* Manler, 21 N. H. 528, 53 Am. Dec. 223; Hafner *v.* Irwin, 20 N. C. (4 Dev. & B.) 570, 34 Am. Dec. 390; Ball *v.* Foreman, 37 Oh. St. 132; Berridge *v.* Glassey, 112 Pa. 442, 3 Atl. 583, 56 Am. R. 322; Temple *v.* Wright, 94 Va. 338, 26 S. E. 884; Johnson *v.* Barden, 86 Vt. 19, 83 Atl. 721; Green Bay, etc., Canal Co. *v.* Hewett, 55 Wis 96, 12 N. W. 382, 42 Am. R. 701; Dickson *v.* Wildman, 105 C. C. A. 618, 183 Fed. 398.

12. Green Bay, etc., Canal Co. *v.* Hewett, 55 Wis. 96, 42 Am. Rep. 701.

limitations to defeat his own grant. But this was no reason; for there was no grant until the instrument was completed and executed, and all parts of the instrument spoke together. Another and more plausible reason was that the rule conduced to certainty and security; but this reason is no better than the other, as has been demonstrated in the construction of wills, where the expressed intention of the testator is always controlling, and where technical rules are resorted to only for the aid they may give in arriving at such intention, and where the security of testators in the disposition of their property and the stability of testaments rests upon the pre-eminent rule that the expressed intention shall govern.[13]

The conveyancers of olden times observed great care to confine to each part of a deed its assigned function. The several parts of the instrument were given an importance and controlling meaning, and the place in the instrument where the meaning of the testator was to be expressed was considered of the gravest importance. The premises included all that was contained in the deed preceding the habendum, and embraced the names of the parties, such recitals as were deemed necessary, the consideration, and the description of the property. Then followed the habendum, the tenendum, the reddendum, the conditions, the warranty, the covenants, and the conclusion. No one provision was allowed to impinge on the province of another. In short, that a grantor might convey as he pleased, and his intention and wishes would be observed by the courts, but with this qualification: that he must express his intention in set and technical language, and at the proper places, and in the right order and clause of the deed. Failing so to do, the courts did not feel called on to bother about his intention, but took what he said first as expressing conclusively his intention, and discarded everything else as void for repugnancy. Such a rule of construction made it almost impossible for any one except a very expert conveyancer to draw an instrument that would stand the test of the rule, and likewise made it very easy for the courts in construing complicated instruments; but it is not so clear that

13. Johnson *v.* Barden, 86 Vt. 19, 83 Atl. 721.

the real intention of the grantor was ascertained or effectuated.[14]

Modern Rule.—Much of the old learning concerning the stress to be put on one clause of a deed over another and concerning the weight and significance to be given words because they appear in one clause and not in another has been exploded. The doctrine, which regarded the granting clause and the habendum and tenendum as separate and independent portions of the same instrument, each with its especial function, is becoming obsolete in this country, and more liberal and enlightened rule of construction obtains, which looks at the whole instrument without reference to formal divisions, in order to ascertain the intention of the parties, and does not permit antiquated technicalities to override the plainly expressed intention of the grantor, and does not regard as very material the part of the deed in which such intention is manifested. This is the decided trend of modern adjudication which subordinates the common law rule that the granting clause controls the habendum in case of conflict to the rule that the intention as shown by the entire deed prevails.[15]

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14. Utter *v.* Sidman, 170 Mo. 284, 70 S. W. 702, 705.

15. Whetstone *v.* Hunt, 78 Ark. 230, 93 S. W. 979; Barrett *v.* Barrett, 104 Cal. 298, 37 Pac. 1049; Jacobs *v.* All Persons, 12 Cal. App. 163, 106 Pac. 896; Wood *v.* Logue, 167 Iowa 436, 149 N. W. 613, Ann. Cas. 1917B, 116; Bredey *v.* Finney, 118 Iowa 276, 91 N. W. 1069; Palmer Oil Co. *v.* Blodgett, 60 Kan. 712, 57 Pac. 947; Dinger *v.* Lucken, 143 Ky. 850, 137 S. W. 776; Singleton *v.* School-Dist., 10 Ky. L. Rep. 851, 10 S. W. 793; Putman *v.* Pere Marquette R. Co., 174 Mich. 246, 140 N. W. 554; Powers *v.* Hibbard, 114 Mich. 533, 72 N. W. 339; Garrett *v.* Wiltse, 252 Mo. 699, 161 S. W. 694; Utter *v.* Sidman, 170 Mo. 284, 70 S. W. 702; Williams *v.* Williams, 175 N. C. 160, 95 S. E. 157; Triplett *v.* Williams, 149 N. C. 396, 63 S. E. 79, 24 L. R. A., N. S., 514; McLeod *v.* Tarrant, 39 S. C. 271, 17 S. E. 773, 20 L. R. A. 846; Forgarty *v.* Stack, 2 Pick. (86 Tenn.) 610, 8 S. W. 847; Johnson *v.* Barden, 86 Vt. 19, 83 Atl. 721, Ann. Cas. 1915A, 1243; Culpeper Nat. Bank *v.* Wrenn, 115 Va. 55, 78 S. E. 620; Pack *v.* Whitaker, 110 Va. 122, 65 S. E. 496; Weekley *v.* Weekley, 75 W. Va. 280, 83 S. E. 1005.

"There is no question as to the technical common-law rule relied on by appellees that the habendum clause of a deed yields to the granting clause where there is a repugnance between the estate granted and that limited in the habendum. That rule has, however, practically become obselete; it certainly has no application where the

The modern rule is much simpler and much more calculated to carry out the wishes of the grantor.[16]

The common-law rule has no application except where the repugnance is such that the intention of the grantor can not be determined with reasonable certainty from the whole instrument,[17] or if ascertained cannot be carried into effect.[18]

It is undoubtedly true that in case of repugnancy between the two and it cannot be determined from the whole instrument and attendant circumstances, with reasonable certainty, that the grantor intended that the habendum should control the conveyancing clause must, in that case, control, for the reason that words of conveyance are necessary to the passage of the title, and the habendum is not ordinarily an indispensable part of a deed;[19] but where it appears from the whole conveyance and attending circumstances that the grantor intended the habendum to enlarge, restrict, or repugn the conveying clause, the habendum must control. It is, in such case, to be considered as an addendum or proviso to the conveyancing clause, which, by a well settled rule of construction, must control the conveyancing clause or premises, even to the extent of destroying the effect of the same.[20]

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intention can be ascertained with reasonable certainty from the whole instrument, and no legal obstacle lies in the way of giving effect to such intention." Culpeper Nat. Bank *v.* Wrenn, 115 Va. 55, 78 S. E. 620, 621.

"All parts of a deed should be given due force and effect. Doren *v.* Gillum, 136 Ind. 134, 35 N. E. 1101. The premises of a deed are often expressed in general terms, admitting of various explanations in a subsequent part of the deed. Such explanations are usually found in the habendum. Carson *v.* McCaslin, 60 Ind. 334. Words deliberately put in a deed, and inserted there for a purpose, are not to be lightly considered, or arbitrarily thrust aside. Mining Co. *v.* Beckleheimer, 102 Ind. 76, 1 N. E. 202, 52 Am. Rep. 645. To discover the intention of the parties is the main object of all constructions." Williams *v.* Williams, 175 N. C. 160, 95 S. E. 157, 160.

16. Utter *v.* Sidman, 170 Mo. 284, 70 S. W. 702, 705.

17. Temple *v.* Wright, 94 Va. 338, 26 S. E. 884; Culpeper Nat. Bank *v.* Wrenn, 115 Va. 55, 78 S. E. 620.

18. Beedy *v.* Finney, 118 Iowa 276, 91 N. W. 1069.

19. Bodine's Adm'r. Arthur, 91 Ky. 53, 14 S. W. 904, 34 Am. St. Rep. 162.

20. Beedy *v.* Finney, 118 Iowa 276, 91 N. W. 1069, 1070; Bodine's

This is so because it is the last expression of the grantor as to the conveyance, which must control the preceding expression.[21]

Where a husband, by means of a third person, conveyed the title to land to his wife in fee simple, habendum to the wife during widowhood, remainder in fee to the heirs of the grantor, it was held, construing the instrument in the light of the surrounding circumstances, that the intention of the grantor was to make provision for his wife during her widowhood, and for the education and maintenance of his infant son by her, and that, to effectuate the intention of the grantor, the limitation of the estate in the habendum would prevail over the conveyance in the premises; so that the wife took a mere estate during her widowhood, which was forfeited by her second marriage.[22]

A deed with habendum clause to the grantee and the heirs of her body forever, wherein the grantor convenants with the grantee and her bodily heirs to warrant the title, creates in the grantee a life estate, with remainder in fee to the heirs of the body of grantee, though the granting clause is unlimited to the grantee.[23]

A husband conveyed land to wife "and her heirs in fee-simple forever." The habendum clause of the deed limited it to her separate use, "with power to sell, and by deed made and executed jointly with her husband, to convey the land, and vest the proceeds in other property, to be held" as the property therein conveyed, and also provided that, if the husband survived, the land should revert to him in fee-simple. The husband survived. It was held that the clause in the habendum providing for reversion of the land to the husband, though repugnant to the fee-

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Adm'r. *v.* Arthur, 91 Ky. 53, 34 Am. St. Rep. 162, 14 S. W. 904; Garrett *v.* Wiltse, 252 Mo. 699, 161 S. W. 694, 697; Culpeper Nat. Bank *v.* Wrenn, 115 Va. 55, 78 S. E. 620.

In Pack *v.* Whitaker, 110 Va. 122, 65 S. E. 496, 498, the court quoted with approval the following from Devlin on Deeds sec. 214: "If it appears from the whole instrument that it was intended by the habendum to restrict or enlarge the estate conveyed by the words of the grant, the habendum clause will prevail."

21. Bodine's Adm'r. *v.* Arthur, 91 Ky. 53, 14 S. W. 904, 34 Am. St. Rep. 162.

22. Whitby *v.* Duffy, 135 Pa. St. 620, 19 Atl. 1065.

23. Miller *v.* Dunn, 184 Mo. 318, 83 S. W. 436, 105 Am. St. Rep. 537.

simple estate previously granted to the wife, controls, as being in accord with the intention of the grantor.[24]

The Virginia statute dispensing with words of limitation, declares that every conveyance shall pass a fee-simple unless "a contrary intention shall appear by the conveyance." [25] In a case construing the statute the deed under consideration conveyed the land to the grantee forever (without words of inheritance), habendum for life; and it was held that, as the premises only conveyed a fee by virtue of the statute, and by the statute the whole deed is to be looked to, in order to ascertain what was intended to be passed, the habendum was not void, but only a life estate passed by the deed.[26] And in another Virginia case it was held that a deed, creating in the premises an estate by entireties between husband and wife, by the habendum gave an estate to the husband alone.[27] Where a deed, by the premises or an earlier part of the habendum, appeared to create a joint estate in fee-simple, it was held that a later clause, reduced the estate to one for life in one of the grantees, with a remainder in fee to the other.[28]

It is a settled rule of construction, both in deeds and wills, that if an estate is conveyed, or an interest given, or a benefit be-

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24. Fogarty *v.* Stack, 2 Pick. (86 Tenn.) 610, 8 S. W. 846.

25. Code 1919, § 5149 (Code 1887, § 2440).

26 Humphrey *v.* Foster, 13 Gratt. (54 Va.) 652, cited and followed in Mauzy *v.* Mauzy, 79 Va. 538, and Bank of Berkeley Springs *v.* Green, 45 W. Va. 171, 174, 31 S. E. Rep. 261, 262, 2 Minor's Real Property § 1110.

In Blair *v.* Muse, 83 Va. 240, 2 S. E. Rep. 31, it is said, that Humphrey *v.* Foster, 13 Gratt. (54 Va.) 652, is not in conflict with the case under consideration, in which case there were two clauses, irreconcilable and repugnant, and it is held that the last was invalid and the first would prevail.

27. Keister *v.* Keister, 99 Va. 541, 39 S. E. 164.

28. Temple's Adm'r. *v.* Wright. 94 Va. 338, 26 S. E. 844; 2 Minor Real Property § 1110.

A deed of land to R. and E. "to have and hold the same, * * * to them and their heirs, forever. The condition of this deed is that said land is conveyed to R. for his special use * * * during his natural life, and at his death to his son E., to him and his heirs or assigns, forever,"—gives R. a life estate, with remainder in fee to E. Temple's Adm'r. *v.* Wright. 94 Va. 338, 26 S. E. 844.

stowed, in one part of the instrument, by clear, unambiguous, and explicit words, such estate, interest, or benefit is not diminished or destroyed by words in another part of the instrument, unless the terms which diminish or destroy the estate before given be as clear and decisive as the terms by which it was created.[29]

Statutory Deeds.—The rule that a habendum in a deed repugnant to the granting clause is void does not apply to the construction of statutory deeds.[30]

Description of Land.

There is no rule of law that, if clauses in a description of land conveyed in a deed are repugnant, the first necessarily prevails over the last.[31] Where the deed contains two descriptions of the land equally explicit, but repugnant to each other, that description which the whole deed shows best expresses the intention of the parties must prevail. The court will look into the surrounding facts, and will adopt that description, if certain and definite, which, in the light of the circumstances under which it was made, will most effectually carry out the intention of the parties.[32]

Reservation, Exceptions and Conditions.

The rule that reservations, exceptions, or conditions in a deed, which are inconsistent with, and tend to depreciate or destroy,

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29. Gaskins *v.* Hunton, 92 Va. 528, 23 S. E. 885, 886, quoted in Wright's Trustees *v.* Wright, 104 Va. 8, 51 S. E. 151; Wolverton *v.* Hoffman, 104 Va. 605, 52 S. E. 176.

30. Adams *v.* Fisher, 143 Mich. 673, 107 N. W. 705, citing Welch *v.* Welch, 183 Ill. 237, 55 N. E. 694.

31. Rathburn *v.* Geer, 64 Conn. 421, 30 Atl. 60; Singleton *v.* School Dist., 10 Ky. L. Rep. 851, 10 S. W. 793.

"We do not think the common-law rule, rejecting the habendum clause of a deed where it is totally repugnant to the granting clause, ever applied to the mere description of the quantity of kind of property conveyed, but simply to the character and kind of estate or interest conveyed." Singleton *v.* School-Dist., 10 Ky. L. Rep. 851, 10 S. W. 793, 794.

32. State Sav. Bank *v.* Stewart, 93 Va. 447, 25 S. E. 543.

the estate or interest granted, are void,[33] only applies where the repugnancy is such that the intention of the parties cannot be ascertained from the whole instrument, or, if ascertained, cannot be carried into effect in accordance with established principles of law.[34] An express reservation in the habendum of a deed of a portion of the land included within the description will prevail over the granting clause, containing no such reservation.[35] And where the habendum clause contained an exception which was not referred to in the granting clause, the exception was not void for repugnancy, if it clearly appears that it was the intention of the parties to make such exception.[36]

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33. Riddle *v.* Charleston, 43 W. Va. 796, 28 S. E. 831.

When an owner of real estate within the corporate limits of a town lays and plats the same off in town lots, streets, and alleys, and sells such lots with relation to such streets and alleys, granting to the purchasers the use of such streets and alleys, the same as though they were public streets and alleys in all respects, and throws them open to the use of the public, he will be considered to have dedicated the same to public use, although the deeds for the lots and such streets and alleys may contain a reservation to the grantor of any damages that may be recoverable against the municipality in case the bed of such streets and alleys should be thereafter condemned for public use, as such reservation is inconsistent with and repugnant to the nature of the estate or interest granted in such streets and alleys, and tends to the destruction thereof. Riddle *v.* Charlestown, 43 W. Va. 796, 28 S. E. 831.

34. Bassett *v.* Budlong, 77 Mich. 338, 43 N. W. 984, 985.

Where a husband quitclaims to his wife the farm on which they live, with the reservation that no conveyance shall be made by her without his written consent or his joining, and that the title shall revert to him in case of her death, and from the face of the deed and the surrounding circumstances, and from a bill of sale to her of the farming utensils, and the fact that he continues until her death to carry on the farm as before, it is apparent that it was not the intent to pass to her the absolute fee, the reservation will not be considered repugnant, and therefore void, but its effect will be to leave the title to the survivor. Bassett *v.* Budlong, 77 Mich. 338, 43 N. W. 984.

35. Singleton *v.* School-Dist., 10 Ky. L. Rep. 851, 10 S. W. 793.

36. Collinsville Granite Co. *v.* Phillips, 123 Ga. 830, 51 S. E. 666.